



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IF AF

In re Application of:

Joey L. Erickson et al.

Serial No.: 09/594,408

Examiner: J. Swearingen

Filing Date: June 15, 2000

Group Art Unit: 2165

For: ADAPTOR ARCHITECTURE

Docket No.: 33012/292/101

TRANSMITTAL SHEET

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

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By Carolyn I. Erickson

We are transmitting herewith the attached:

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- ☒ Other: Appeal Brief in Triplicate.
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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of)

Joey L. Erickson et al.)

Serial No. 09/594,408)

Filing Date: 06/15/00)

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Group Art Unit 2165

APPEAL BRIEF

APPELLANT'S BRIEF

FILED UNDER 37 C.F.R. § 41.37

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

<p>CERTIFICATE UNDER 37 C.F.R. 1.8: I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, Alexandria, VA, 22313-1450 on this: <u>14</u> th day of <u>April</u>, 20 <u>08</u>.</p> <p>By <u>Carolyn I. Erickson</u></p>

This appeal brief is being filed in triplicate within sixty days of the Notice of Appeal mailed February 14, 2008. Permission is hereby granted to charge or credit deposit account number 14-

0620 for any errors in fee calculation. Appellants request this Supplemental Appeal Brief be made of record and fully considered.

REAL PARTY IN INTEREST

The Real Party in interest is:

Unisys Corporation

Township Line and Union Meeting Roads

Blue Bell, Pennsylvania 19424

being the assignee of the entire right, title, and interest by all inventors, by way of assignment documents filed at Reel 010904, frame 0122, in the United States Patent and Trademark Office.

RELATED APPEALS AND INTERFERENCES

There are no known pending Appeals and/or Interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal. Therefore, there are no decisions to be placed in the attached Related Proceedings Appendix.

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STATUS OF CLAIMS

The subject patent application was filed on June 15, 2000 containing claims 1-20. In a notice mailed November 15, 2006, the Examiner levied a requirement for restriction. As a result, Applicants elected to prosecute claims 1-5 and 16-20. Claims 6-15 have been canceled as directed to non-elected species. Thus, Applicants herein appeal the final rejection of claims 1-5 and 16-20, in the form contained in the attached Claims Appendix.

During prosecution, claims 1-5, 16-17, and 19-20 have been amended in accordance with amendments filed October 30, 2003, March 30, 2004, April 30, 2004, September 21, 2004, May 6, 2005, June 10, 2005, December 2, 2005, April 19, 2007, and August 16, 2007. On November 4, 2007, the Examiner mailed the pending final office action. Applicants have not filed an amendment after final in response thereto but have initiated this appeal from that final rejection of claims 1-5 and 16-20, being all pending claims. Therefore, claims 1-5 and 16-20 as noted in the hereto attached Claims Appendix are in the form finally rejected by the Examiner. No pending claim has ever been found to contain allowable subject matter.

STATUS OF THE AMENDMENTS

Applicant has filed responses to official actions on October 30, 2003, March 30, 2004, April 30, 2004, September 21, 2004, May 6, 2005, June 10, 2005, December 2, 2005, April 19, 2007, and August 16, 2007. Of these submissions, all pertinent amendments have been made to the claims. No amendment after final was filed in response to the pending final office action mailed November 14, 2007.

AS a result, claims 1-5 and 16-20, recorded herewith as Claims Appendix, are in the form of November 14, 2007 at the time of the pending final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER¹

The present invention relates to methods and apparatus for facilitating on-line processing requests, and more specifically, to adapting multiple client formats to the use of a single gateway in communicating with an On-Line Transaction Processing (OLTP) Enterprise Server from user work stations².

The present invention overcomes many of the disadvantages associated with the prior art by providing a method and apparatus for adapting transaction requests in multiple formats from web based work stations directed to OLTP enterprise server systems utilizing a single gateway. In the preferred mode, the work station is an industry compatible personal computer running a commercially available browser operating under a common operating system such as Windows. The client work station is coupled, via the Internet, to an NT server through the middleware product of the present invention which is a generic WebTx gateway. This gateway permits the user work station to communicate as with other type Internet applications.³

¹ The references to the specification and drawings provided herein are only exemplary and are not deemed to be limiting. The purpose of the references is to enable the Board to more quickly determine where the claimed subject matter is described within the present application.

²See Specification at page 1, lines 18-23.

³See Specification at page 7, lines 2-14.

A plurality of adapters convert each of the differing request formats into a single input format for the single generic gateway. In this manner, a client may make a service request via C++, ASP (i.e., an active server page from a web browser), or other format. The appropriate corresponding adapter converts the service request to a standardized format and presents the information to the generic gateway. After processing, the generic gateway couples service request information to one of a plurality of corresponding connectors for transfer to the end service provider.⁴

In accordance with one preferred mode of the present invention, a service request is made from an industry compatible personal computer in the form of an ASP created by a commercially available web browser. The web page is transferred to the ASP adapter and converted into the standardized form. The converted service request is transferred to the generic gate, which sends the information to the appropriate one of the plurality of connectors. The selected connector transfers the service request to an enterprise server which honors the service request.⁵

The use of a plurality of adapters and a plurality of connectors, in combination with a single generic gateway, greatly simplifies the development process in that new gateways need not be

⁴See Specification at page 7, line 15, through page 8, line 1.

⁵See specification at page 8, lines 2-11.

generated each time a new service request format is encountered. The adapters may be created and added to the middleware system in a "plug and play" manner. Each new adapter only need made to communicate with the standardized generic gateway input. Because the adapters are much more easily generated than completely new gates, significant development savings are realized.⁶

FIG. 1 is a functional block diagram of an exemplary computing environment in which the present invention could be used to make an enterprise based transaction processing system interoperable with a PC/Workstation based requestor⁷. ⁸FIG. 2 is a functional diagram of the major components of the preferred mode of the present invention. Fig 3 is a functional block diagram of a populated embodiment of the present invention showing a plurality of clients, adapters, and connectors⁹.

Claims 16 and 17 are the only pending claims having "means-plus-function" limitations. Claim 16 has five such limitations which are correlated to Applicants' disclosure as follows:

- a) "first generating means"¹⁰;
- b) "second generating means"¹¹;

⁶See Specification at page 8, lines 12-21.

⁷See Specification at page 14, lines 1-14.

⁸See Specification at page 17, lines 1-2.

⁹See Specification at page 18, lines 1-3.

¹⁰See Specification at page 14, lines 5-6 and Fig. 1, Client 10.

¹¹See Specification at page 14, lines 5-6 and Fig. 1, Client 12.

- c) "transferring means"¹²;
- d) "adapting means"¹³; and
- e) "processing means"¹⁴.

Claim 17 has a single "means-plus-function", called "transferring means". This element is shown in Fig. 1 as element 50 and discussed in the specification at page 14, lines 15-17.

Claims 18-20 which depend from independent claim 16 present no additional "means-plus-function" limitations.

¹²See Specification at page 14, lines 5-8, and Fig. 1, Network 20.

¹³See Specification at page 22, lines 3-8, and Fig. 2, element 70.

¹⁴See Specification at page 15, lines 3-5, and Fig. 1, element 52.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Are claims 1-5 and 16-20 unpatentable under 35 U.S.C. 101 as directed to non-statutory subject matter?

II. Are claims 1-3 and 16-19 unpatentable under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,790,809, issued to Holmes (hereinafter referred to as "Holmes")?

III. Is claim 4 unpatentable under 35 U.S.C. 103(a) as being obvious over Holmes?

IV. Are claims 5 and 20 unpatentable under 35 U.S.C. 103(a) as being obvious over Holmes in view of U.S. Patent No. 5,758,351, issued to Gibson (hereinafter referred to as "Gibson")?

ARGUMENT

I. Claims 1-5 and 16-20 are not unpatentable under 35 U.S.C. 101 as directed to non-statutory subject matter.

Claims 1-10 and 16-20 have been rejected under 35 U.S.C. 101 as being allegedly directed to non-statutory material. This ground of rejection is respectfully traversed.

In support of his rejection, the Examiner states:
Claims 1-10 and 16-20 seem to be directed to software *per se*, and not towards any embodiment of hardware.

Quite apart from the fact that this finding is clearly erroneous¹⁵ and contrary to controlling law¹⁶, it specifically contradicts the Examiner previous findings. In paragraph 14 of the official action mailed September 2, 2005, the Examiner expressly states:

....the claims seem to be directed towards a hardware definition of these terms.

The rejection under 35 U.S.C. 101 is respectfully traversed.

¹⁵Claims 1-5 and 16-20 claim a data processing system and/or apparatus having both hardware and software components in the preferred embodiments as explained above in the Summary of the Invention.

¹⁶The Examiner has not and indeed cannot cite any authority in support of this position.

II. Claims 1-3 and 16-19 unpatentable under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,790,809, issued to Holmes (hereinafter referred to as "Holmes").

Claims 1-3 and 16-19 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,790,809, issued to Holmes (hereinafter referred to as "Holmes"). This ground of rejection is respectfully traversed for the reasons provided below.

The standards for a finding of anticipation during examination are specified in MPEP 2131, which provides in part:

TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH
EVERY ELEMENT OF THE CLAIM
"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). **"The identical invention must be shown in as complete detail as is contained in the ... claim."** *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (emphasis added)

The rejection is respectfully traversed because Homes does not show "the identical invention....in as complete detail as is contained in the claim[s]" as required by MPEP 2131.

It is the essence of Applicants' invention as disclosed and claimed that the claimed "client work station" operates and communicates in one format and the claimed "enterprise server"

operates and communicates in another which is incompatible with the "client work station" format. Thus, the invention as disclosed and claimed includes structure for conversion between the "client work station" format and the "enterprise server" format.

Holmes provides no such conversion. Apparently, the requesting client and honoring server of Holmes both operate and communicate using the same format. However, Holmes is directed to the task of transferring messages between the requesting client and honoring server via incompatible intermediate servers. The approach utilized by Holmes is to "encapsulate" the messages within a message shell which can be transferred via the incompatible intermediate servers.

Holmes summarizes this process in his Abstract stating:

....each client capable of initiating an application in which a related compatible server is involved. Communication between the clients and servers involve a first registry process including the acceptance of application specific messages from a client, destined for a preselected server, and encapsulating them into standard registry specific messages.....The second registry accepts the translated message and converts them from protocol format to the original application specific format for use by the preselected compatible server.
(Emphasis added)

In other words, the requesting client and honoring server are required to be compatible in format.

II.A. Claim 1 is not anticipated by Holmes.

Claim 1, for example, is limited by:

a first client work station for entering a first transaction request, wherein said first transaction request has a first one of a plurality of protocols

an enterprise server for responding to said first transaction request using an enterprise protocol which is not one of said plurality of protocols (emphasis added)

Thus, in Applicants' claimed invention, the formats are different, necessitating the claimed structure (i.e., "generic gateway") to perform the conversion process which is neither needed nor found in Holmes. The rejection of claim 1, and all claims depending therefrom, should be reversed for failure of Holmes to meet the requirements of MPEP 2131 to show anticipation.

II.B. Claim 2 is not anticipated by Holmes.

Claim 2 depends from claim 1 and is further limited by "adapters" interposed between the claimed "client work stations" and the claimed "generic gateway". Holmes, of course, does not have this limitation, because it does not make the conversion as explained above. However, instead of allowing claim 2 for failure to meet the requirements of MPEP 2131, the Examiner somehow finds the claimed "adapters" inherent without meeting the requirements of MPEP 2112. Therefore, the rejection of claim 2 should be reversed for failure of the Examiner to meet his burden under either MPEP 2112 or MPEP 2131.

II.C. Claim 3 is not anticipated by Holmes.

Claim 3 depends from claim 2 and further limits the claimed "network". As shown above, Holmes cannot meet the limitations of claim 2 from which claim 3 depends. Therefore, Holmes cannot meet the further limitations of claim 3. The rejection of claim 3 should be reversed.

II.D. Claim 16 is not anticipated by Holmes.

Claim 16 is an independent apparatus claim having "means-plus-function" limitations. As such it is to be examiner in accordance with MPEP 2181 et seq. It is clear that the Examiner has not complied with MPEP 2181, for example, which requires him to expressly acknowledge the "means-plus-function" limitations. Instead of complying with controlling law, the Examiner states:

The limitations of claim 16 are substantially the same as the limitations of claim 1. The rejection of claim 1 is used against claim 16.

In addition to the issues discussed above, the rejection of claim 16, and all claims depending therefrom, should be reversed for failure of the Examiner to properly examine the claimed invention.

II.E. Claim 17 is not anticipated by Holmes.

Claim 17 depends from claim 16 and is further limited by "connectors". In rejecting claim 17, the Examiner states:

The limitations of claims 17-18 are substantially the same as the limitations of claim 2.

In addition to inadequacy as a matter of law for the reasons provided above (e.g., claim 17 contains "means-plus-function" limitations), the Examiner's statement is clearly erroneous. Claim 17 explicitly requires the claimed "connectors" which are not limiting of claim 2. The rejection of claim 17 should be reversed as based upon clearly erroneous findings of fact and inadequate application of controlling law.

II.F. Claim 18 is not anticipated by Holmes.

Claim 18 depends from claim 17 and is further limited by the relationship of the "connectors" to the "adapters". In rejecting claim 18, the Examiner states:

The limitations of claims 17-18 are substantially the same as the limitations of claim 2.

In addition to inadequacy as a matter of law for the reasons provided above, the Examiner's statement is clearly erroneous. Claim 18 explicitly requires the claimed "connectors" which are not limiting of claim 2. The rejection of claim 18 should be reversed as based upon clearly erroneous findings of fact and inadequate application of controlling law.

II.G. Claim 19 is not anticipated by Holmes.

Claim 19 depends from claim 18 and further limits the claimed "network". As shown above, Holmes cannot meet the limitations of claim 18 from which claim 19 depends. Therefore, Holmes cannot meet the further limitations of claim 19. The rejection of claim 19 should be reversed.

III. Claim 4 is not obvious over Holmes.

Claim 4 has been rejected under 35 U.S.C. 103(a) as being obvious in view of Holmes. This ground of rejection is respectfully traversed for failure of the Examiner to make any of the three showings required by MPEP 2143.

To make a *prima facie* case of obviousness, MPEP 2143 requires the Examiner to provide evidence and argument showing: 1) motivation to make the alleged modifications; 2) reasonable likelihood of success of the alleged modified reference; and 3) all claimed elements within the alleged modified reference. The Examiner has failed to make any of these three required showings. Therefore, because the Examiner has not made a *prima facie* case of obviousness, Applicants need not and indeed cannot offer appropriate evidence and argument in rebuttal.

In alleging motivation, the Examiner states:

It would have been obvious to one of ordinary skill in the art to put any portion or combination of the elements in the Holmes invention in any type of housing. (Emphasis added)

This statement is clearly erroneous as a matter of law. Having no "generic gateway" or "middleware" as claimed, it is not even plausible to suggest that these elements could be housed by Holmes in any particular manner.

The third showing required by MPEP 2143 is that all claimed elements are present. The Examiner specifically admits that not all of the claimed elements are present in Holmes. Therefore, the rejection of claim 4 is respectfully traversed for failure of the Examiner to make any of the three showings required by MPEP 2143 to present a *prima facie* case of obviousness.

IV. Claims 5 and 20 are not obvious over Holmes in view of Gibson.

The pending official action has been made final, notwithstanding new grounds of rejection not necessitated by Applicants' amendment. Furthermore, the Examiner has done so without properly making Gibson of record. Therefore, the rejection of claims 5 and 20 should be reversed for a number of procedural inadequacies in examination.

IV.A. Claim 5 is not obvious over Holmes in view of Gibson.

Claim 5 depends from claim 4 and is further limited by "wherein said first client work station further comprises a personal computer and wherein said first one of said plurality of protocols utilizes Visual Basic language". Because the alleged combination cannot meet these limitations, the Examiner improperly paraphrases Applicants' claim language.

Furthermore, the Examiner has admitted that Holmes does not meet the limitations of claim 4 from which claim 5 depends. Therefore, the alleged combination cannot meet the further limitations of claim 5 as a matter of law. The rejection of claim 5 should be reversed as contrary to controlling law.

IV.B. Claim 20 is not obvious over Holmes in view of Gibson.

Claim 20 depends from claim 19 and is further limited by "wherein said generating means further comprises an industry compatible personal computer operating under a commercially available operating system and wherein said first service request utilizes C++ language". Because the alleged combination cannot meet these limitations, the Examiner improperly paraphrases Applicants' claim language.

Furthermore, Holmes does not meet the limitations of claim 19 from which claim 20 depends, as explained above. Therefore, the

alleged combination cannot meet the further limitations of claim 20 as a matter of law. The rejection of claim 20 should be reversed as contrary to controlling law.

CONCLUSION


Having thus reviewed the final rejection of claims 1-5 and 16-20, being all pending claims, it seems abundantly clear that the limitations of these claims are not unpatentable in view of the prior art of record. Thus, the rejection of these claims should be reversed as being based upon clearly erroneous fact findings and errors of law.

Respectfully submitted

Joey L. Erickson et al.

By their attorney,

Date April 14, 2008



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CLAIMS APPENDIX

- 5 1. A data processing system comprising:
- a. a first client work station for entering a first transaction request, wherein said first transaction request has a first one of a plurality of protocols;
- 10 b. an enterprise server for responding to said first transaction request using an enterprise protocol which is not one of said plurality of protocols;
- c. a second client work station for entering a second transaction request wherein said second transaction request has a second one of said plurality of protocols which is different from
- 15 said first one of said plurality of protocols responsively coupled to said enterprise server via said digital communication network; and
- d. a generic gateway interposed between said first user terminal and said enterprise server and between said second user
- 20 terminal and said enterprise server which responsively couples said first client work station and said second client work station to said enterprise server by converting said first one and said second one of said plurality of protocols to said enterprise protocol.

2. A data processing system according to claim 1 further comprising a plurality of adapters interposed between said generic gateway and said first client work station and said second client work station which responsively couples said first client work station to said generic gateway via a first one of said plurality of adapters which corresponds to said first one of said plurality of protocols and which responsively couples said second client work station to said generic gateway via a second one of said plurality of adapters which corresponds to said second one of said plurality of protocols.

3. A data processing system according to claim 2 wherein said digital communication network further comprises the internet.

4. A data processing system according to claim 3 further comprising a Server housing said generic gateway and providing a middleware environment.

5. A data processing system according to claim 4 wherein said first client work station further comprises a personal computer and wherein said first one of said plurality of protocols utilizes Visual Basic language.

16. An apparatus comprising:

a. first generating means for generating a first service request using a first one of a plurality of protocols;

b. second generating means for generating a second service request using a second and different one of a plurality of protocols;

c. transferring means responsively coupled to said generating means for transferring said first service request and said second service request via a digital data network;

d. adapting means responsively coupled to said digital data network for adapting said first service request and said second service request to a standardized protocol using a different one of a plurality of adapters to convert said first service request and said second service request; and

e. processing means responsively coupled to said adapting means for processing said first service request and said second service request via a generic gateway.

17. An apparatus according to claim 16 further comprising means responsively coupled to said processing means for transferring said first service request and said second service request to an end service provider via a plurality of connectors.

18. An apparatus according to claim 17 wherein said one of said plurality of adapters corresponds to said one of said plurality of connectors.

19. An apparatus according to claim 18 wherein said digital data communication network is the Internet.

20. An apparatus according to claim 19 wherein said generating means further comprises an industry compatible personal computer operating under a commercially available operating system and wherein said first service request utilizes C++ language.

EVIDENCE APPENDIX

There is no evidence or documents deemed appropriate to be included within this Appendix.

RELATED PROCEEDINGS APPENDIX

There are no decisions or other papers deemed appropriate to be included in this Appendix.